



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

REPLY TO THE ATTENTION OF:
5SPT-7

3 OCT 1989

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Jacob H. Martin
1775 Glenview Road, Suite 211
Glenview, Illinois 60025

RE: In the Matter of
Docket No. IF&R-V-004-88



Dear Mr. Martin:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The other original was filed with the Regional Hearing Clerk.

Within thirty (30) days of the filing date with the Regional Hearing Clerk, please forward by cashier's or certified check the civil penalty in the amount of \$10,000.00. The check must be payable to the U.S. Treasury and sent directly to:

U.S. Environmental Protection Agency
Region V
P. O. Box 70753
Chicago, Illinois 60673

Please send a copy of the transmittal letter for the clerk and a copy of the check to Mr. Scott Dismukes, Office of Regional Counsel.

Thank you for your cooperation in this matter.

Sincerely,

Dea M. Zimmerman

Dea M. Zimmerman
Environmental Protection Specialist

Enclosures

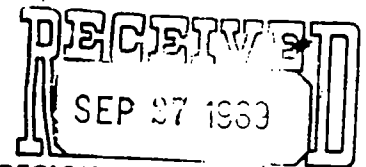
cc: Honorable Frank W. Vanderheyden
Administrative Law Judge (w/CAFO)
Regional Hearing Clerk

ATTACHMENT 2

bcc: J. Ward
P. Reed
S. Dismukes (w/CAFO)
ORC Branch Chief AWIGL (w/CAFO)
OPA (w/CAFO)
Zottomayer, Financial Managment (c/CAFO)
Jerry Stubbs, EN-342 (w/CAFO)
SLA (w/CAFO)
sn/ps/ptsb/cofile/ra (w/CAFO)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN RE:) IF&R-V-004-88
)
KENNETH J. KASS AND) CONSENT AGREEMENT
CONTINENTAL CHEMISTE CORPORATION) AND
) FINAL ORDER
Respondents.)
_____)



REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

CONSENT AGREEMENT AND FINAL ORDER

WHEREAS,

1. This civil administrative proceeding for the assessment of a penalty was initiated pursuant to Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) 7 U.S.C. §136 and Section 22.01(a)(1) and 22.13 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. §22.01(a)(1), 22.13.

2. A Complaint and Notice of Opportunity for Hearing was filed by Complainant on April 2, 1988 charging in eight counts that Respondent violated Section 14 of FIFRA, 7 U.S.C. §1361 by failing to comply with the requirements of FIFRA.

3. On May 26, 1989, upon Complainants Motion to Amend Penalty Amount, the proposed penalty in the Complaint was amended to \$94,641.00.

4. On June 20, 1989, after an Oral Motion by Complainants, the Court Ordered Counts V-and VII stricken from the Complaint.

5. Count I alleged violations of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. §136j(a)(1)(A), for the selling, offering for

sale, distributing or shipping the unregistered pesticide SMO-CLOUD for which Complainant sought a civil penalty of \$300,000.00.

6. Count II alleged violations of Section 12(a)(2)(K) of FIFRA, 7 U.S.C. §136j(a)(2)(K), for selling, offering for sale, distributing or shipping the cancelled SMO-CLOUD after May 31, 1986 for which Complainant sought a civil penalty of \$300,000.00.

7. Count III alleged violations of Section 12(a)(2)(B) of FIFRA, 7 U.S.C. §136(j)(a)(2)(B), for refusing to allow the inspection of Continental Chemiste's records showing the delivery, movement or holding of SMO-CLOUD on Wednesday, December 3, 1986, for which Complainant sought a civil penalty of \$4,200.00.

8. Count IV alleged violations of Section 12(a)(2)(B) of FIFRA, 7 U.S.C. §136(j)(a)(2)(B), for refusing to allow the inspection of Continental Chemiste's records showing the delivery, movement or holding of SMO-CLOUD on Wednesday, February 11, 1987, for which Complainant sought a civil penalty of \$4,200.00.

9. Count VI alleged violations of Section 12(a)(2)(K) of FIFRA, 7 U.S.C. §136j(a)(2)(K), for the sale of SMO-CLOUD in violation of the labeling requirements of the cancellation order for which Complainant sought a civil penalty of \$5,000.00.

10. Count VIII alleged violations of Section 12(a)(2)(K) of FIFRA, 7 U.S.C. §136j(a)(2)(K), for the sale of BUG-TAB in

violation of the labeling requirements of the cancellation order for which Complainant sought a civil penalty of \$5,000.00.

11. The Complainant alleged that the violations were observed on February 13, 1987, during an inspection pursuant to a warrant by authorized representatives of the United States Environmental Protection Agency (U.S. EPA).

12. The parties discussed settlement of this action on numerous occasions. Jacob Martin, Counsel for the Respondent, and Kenneth J. Kass represented Respondent. Scott R. Dismukes, Assistant Regional Counsel, Counsel for Complainant, and John Ward, Chief, Pesticides Section, U.S. EPA, Region V, represented Complainant.

WHEREFORE, for the purpose of this proceeding only, and without prejudice to any other proceeding:

13. Respondents Continental Chemiste Corporation and Kenneth J. Kass hereby admit the jurisdictional allegations in the Complaint.

14. Respondent Continental Chemiste Corporation admits the factual allegations set forth in the Complaint.

15. Respondents Continental Chemiste Corporation and Kenneth J. Kass waive their right to a hearing on the allegations of the Complaint.

16. Respondents Continental Chemiste Corporation and Kenneth J. Kass certify that they are in compliance and will remain in compliance with the requirements of FIFRA, 7 U.S.C. §136 through §136(y).

17. In consideration of the foregoing certifications, stipulations, agreements and litigation factors, and in consideration of Respondent's demonstration of inability to continue in business, Complainant agrees to mitigate the \$94,641.00 civil penalty proposed in the Complaint to \$10,000.00 cash payable with 30 days of filing of this Consent Agreement with the Regional Hearing Clerk. If Continental Chemiste Corporation, its successors and assigns register or reregister their indoor smoke fumigation products, then Continental Chemiste Corporation, its successors and assignees shall pay \$5,000.00 per year for five years. These contingent \$5,000.00 payments are due and owing on the fifteen of January of each of the five years. The validity, amount and appropriateness of either penalty is not subject to review in a collection proceeding, 15 U.S.C. §2615(a)(4)(A).

18. The civil penalty payable under Paragraph 17 shall be by certified check payable to "Treasurer, United States of America" and sent to Regional Hearing Clerk, U.S. Environmental Protection Agency, Region V, P.O. Box 70753, Chicago, Illinois 60673 within 30 days after filing a fully executed copy of this Consent Agreement and Final Order with the Regional Hearing Clerk. A copy of the payment shall be sent to the Branch Secretary, Pesticides & Toxic Substances Branch (5SPT-7), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

19. If at any time during the duration of this Consent Agreement and Final Order Continental Chemiste Corporation, its successors and assignees, other than Jacob H. Martin personally, or Kenneth J. Kass sells either an unregistered or a cancelled pesticide they shall pay \$4,250.00 stipulated penalty per violation as defined in FIFRA, 7 U.S.C. §§136 through 136y.

20. Furthermore, on any amount overdue under either Paragraphs 18 or 19, interest shall accrue at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. §3717. In addition, after the first thirty (30) days that any amount under Paragraphs 18 or 19 is overdue, a late payment handling charge of Twenty Dollars (\$20.00) is owed, and an additional charge of Ten Dollars (\$10.00) is owed for every subsequent thirty (30) day period that any monies are overdue. Also, a six percent per annum penalty shall be applied on any principal amount not paid within ninety (90) days after the Final Order is signed by the Regional Administrator.

21. This Consent Agreement constitutes the entire agreement between Complainant and Respondent.

22. Respondent consents to the issuance of the following
Final Order.

KENNETH J. KASS AND
CONTINENTAL CHEMISTE CORPORATION,
Respondents.

Date: 9-15-89

By:

Jacob H. Martin
Jacob H. Martin
President & Owner of CCC

By:

Kenneth J. Kass
~~for Continental Chemiste~~
~~Corporation~~
Kenneth J. Kass

UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY, Complainant.

Date: 9/25/89

By:

William H. Sanders III
William H. Sanders III, P.E.
Director, Environmental Sciences
Division
U.S. Environmental Protection
Agency
Region V
230 South Dearborn Street
Chicago, Illinois 60604

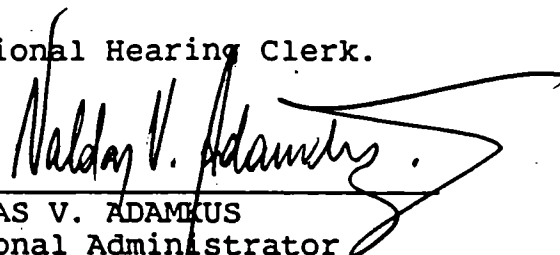
IN RE: KENNETH J. KASS AND CONTINENTAL CHEMISTE CORPORATION
IF&R-V-004-88

FINAL ORDER

It is so Ordered, as agreed to by the parties and as stated in the Consent Agreement. This Order disposes of this proceeding pursuant to 40 C.F.R. §22.18(c) and shall become effective upon filing with the Regional Hearing Clerk.

Date:

Sept. 27th, 1989


VALDAS V. ADAMKUS
Regional Administrator
U.S. Environmental Protection
Agency, Region V
230 South Dearborn Street
Chicago, Illinois 60604